

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL ACTION H-15-212
	§	
AVERY LAMARR AYERS	§	

MEMORANDUM OPINION AND ORDER

Pending before the Court are defendant’s *pro se* motions to amend his criminal judgment (Docket Entry No. 147) and to proceed *in forma pauperis* (Docket Entry No. 145), and the Government’s motion to dismiss (Docket Entry No. 149).

Defendant moves to amend his criminal judgment to remove the provision for a three-year term of supervised release. As grounds, he argues that federal supervised release violates the Fifth Amendment, the Eighth Amendment, and the Double Jeopardy Clause.


In its motion to dismiss, the Government argues that the relief sought by defendant is in the nature of habeas relief under section 2255. Defendant filed an earlier section 2255 motion, which was denied in April, 2019. Defendant raised claims of ineffective assistance of trial and appellate counsel in that proceeding, but did not challenge the three-year term of supervised release.

Defendant’s motion to amend challenges the constitutionality of his sentence and judgment, and stands as a successive section 2255 habeas petition. *See Williams v. Thaler*, 602 F.3d 291, 305 (5th Cir. 2010); *see also Gonzalez v. Crosby*, 545 U.S. 524, 531–33

(2005). Pursuant to section 2255(h), defendant was required to obtain authorization from the Fifth Circuit Court of Appeals to file this successive habeas petition. 28 U.S.C. § 2255(h). Because public online records for the Fifth Circuit show that defendant did not obtain authorization from that court to file the pending section 2255 motion, the motion must be dismissed for lack of jurisdiction.

For these reasons, the Government's motion to dismiss (Docket Entry No. 149) is GRANTED. Defendant's motion to amend his criminal judgment (Docket Entry No. 147), construed as a section 2255 motion, is DISMISSED WITHOUT PREJUDICE FOR WANT OF JURISDICTION as an unauthorized successive section 2255 motion. Defendant's motion to proceed *in forma pauperis* (Docket Entry No. 145) is DENIED AS MOOT. A certificate of appealability is DENIED.

Signed at Houston, Texas on February 28, 2020.



Gray H. Miller
Senior United States District Judge